Assessment Year 1992-93

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

OLD No:- 237/2000
I.T.A No. 304 of 2001

M/s Hughes Services (Far East) Pvt.Ltd.
As agent of Mr. Machenzie K. …….. Appellant

Versus

Commissioner of Income Tax. …….. Respondent

Mr. V.K.Bisht, learned counsel for the appellant,
Mr. S.K.Posti, learned counsel for Income Tax Department.

Hon.ble P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

The matter is squarely covered by our decision dated 9th October, 2003 in Income Tax appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another Vs SEDCO Forex International Drilling Co. Ltd.

The questions raised before us is as follows:

" Whether on the facts and in the circumstances of the case, Tribunal is legally justified in treating the amount paid for the off period as the income earned in India in view of the explanation to section 9 (1) (ii) while admittedly no service has been rendered during off period in India and inasmuch as, the subsequent amendment made in the explanation w.e.f. 01.04.2000 shows that the amount paid for off period or leave period is regarded as the income accrued in India only w.e.f. 01.04.2000?"

In our decision dated 9th October 2003 in Income Tax Act Appeal No. 57 of 2002; The commissioner of Income Tax, Dehradun & another V/s SEDCO Forex Internationl Drilling Co. Ltd.; it has been held as under:

" Therefore the payment of salary for OFF period was income earned in India i.e. for services rendered in India u/s 9 (1) (ii) .

Lastly, we would like to point out that in this case the assessment records show that from the income of the Indian operations the salary in its entirety (including salary for the off period) has been paid by the employer Company. This conduct shows the intention of the contracting parties. Hence the entire salary for both the periods was taxable in India u/s 9(1) (ii)."

For the reasons aforesaid, we answer the above question in the negative i.e. in favour of the department and against the assessee.

Appeal disposed of. No order as to costs.

(Rajesh Tandon, J.) **(P.C.Verma, A.C.J.)**

Dt. 29.05.2004
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